

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Alltel Corporation Petition For Limited Waiver	)	WT Docket No. 05-287
of Location-Capable Handset Penetration Rule	)	
	)	

**ORDER**

**Adopted: May 4, 2006**

**Released: January 5, 2007**

By the Commission:

**I. INTRODUCTION**

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Alltel Corporation (Alltel),<sup>1</sup> a Tier II wireless service provider.<sup>2</sup> Specifically, Alltel requests an eighteen-month extension of time to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology must achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.<sup>3</sup>

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines pursuant to our waiver authority, the Commission has afforded relief only when the requesting carrier has met the Commission's standard for waiver of the Commission's rules.<sup>4</sup> Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.<sup>5</sup>

<sup>1</sup> See Alltel Corporation Petition for Limited Waiver, WT Docket No. 05-287, filed Sept. 30, 2005 (Alltel Petition). In support of its Petition, Alltel submitted certain information under a request for confidential treatment pursuant to § 0.459 of the Commission's Rules. Because this *Order* discusses only that information already made public by Alltel, we need not rule on Alltel's request at this time. Until we so rule, we will honor Alltel's request for confidential treatment. See 47 C.F.R. § 0.459(d)(1).

<sup>2</sup> Tier II carriers are Commercial Mobile Radio Service (CMRS) providers that had over 500,000 subscribers as of the end of 2001 but were not designated as nationwide Tier I carriers by the Commission. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14847-48 ¶¶ 22-23 (2002) (*Non-Nationwide Carriers Order*).

<sup>3</sup> See 47 C.F.R. § 20.18(g)(1)(v); Alltel Petition at 1-2.

<sup>4</sup> See Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18277, 18281-86 ¶¶ 13-30 (2001); Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18330, 18335-38 ¶¶ 15-26 (2001); Request for Waiver by Verizon Wireless, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18364, 18369-74 ¶¶ 16-26 (2001); Request for

(continued....)

3. Based on the record before us, we deny Alltel's waiver request. As we explain more fully below, Alltel's request fails to satisfy the Commission's waiver standard,<sup>6</sup> and thus we decline to grant the requested eighteen-month extension of the Commission's December 31, 2005 95% handset penetration requirement. Alltel's waiver request is not "specific, focused and limited in scope," fails to articulate a "clear path to full compliance," and lacks evidence that Alltel took the necessary concrete steps to come as close as possible to full compliance by the deadline. We find that Alltel failed to take sufficient efforts in advance of the deadline to assure timely compliance, and has not committed to taking additional steps to ensure that it achieves compliance as quickly as possible. Therefore, we will also refer the matter of Alltel's failure to comply with the handset penetration requirements to the Commission's Enforcement Bureau for appropriate enforcement action.

## II. BACKGROUND

### A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.<sup>7</sup> Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),<sup>8</sup> or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).<sup>9</sup> The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.<sup>10</sup> However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.<sup>11</sup>

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's Rules, independent of any PSAP request  
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Waiver by AT&T Wireless Services, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18253, 18257-59 ¶¶ 13-19 (2001); Request for Waiver by Cingular Wireless LLC, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18305, 18308-11 ¶¶ 14-20 (2001); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-7710 ¶ 1 (2005) (*Tier III Carriers Order*). Tier III carriers may be entitled to relief pursuant to the Commission's waiver standard or, alternatively, the ENHANCE 911 Act, which directs the Commission to grant waivers for Tier III carriers of the 95% penetration benchmark if "strict enforcement . . . would result in consumers having decreased access to emergency services." National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>5</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1.

<sup>6</sup> See *infra* ¶¶ 17-24.

<sup>7</sup> See 47 C.F.R. § 20.18(e).

<sup>8</sup> Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3, *Network-based Location Technology*.

<sup>9</sup> Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3, *Location-Capable Handsets*.

<sup>10</sup> See 47 C.F.R. § 20.18(f), (g)(2).

<sup>11</sup> See 47 C.F.R. § 20.18(j)(1).

for Phase II service.<sup>12</sup> After ensuring that 100% of all new digital handsets activated are location-capable, licensees must achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.<sup>13</sup>

## B. Waiver Standards

6. On September 8, 2000, the Commission released the *Fourth MO&O*, in which it recognized that “special circumstances” may warrant a waiver of the E911 Phase II requirements.<sup>14</sup> The Commission’s general waiver standards require a waiver proponent to show that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>15</sup> With respect to waiver of the E911 Phase II requirements, the Commission required that waiver requests must be “specific, focused and limited in scope, and with a clear path to full compliance,”<sup>16</sup> and that requesting carriers “should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests.”<sup>17</sup> The requirement that carriers present a “clear path to full compliance,” dictates that we grant relief only when sufficiently justified, and limit any extension of the handset penetration deadline to the shortest practicable time.<sup>18</sup> We otherwise continue to expect carriers to achieve full compliance with the E911 Phase II requirements as soon as possible.<sup>19</sup>

7. In its 2003 *Order to Stay*,<sup>20</sup> the Commission put carriers on notice that any claim based on factors beyond a carrier’s control would be credited only if the carrier submitted specific evidence substantiating the claim, *e.g.*, documentation that, despite a carrier’s good faith efforts to conclude agreements with outside sources whose equipment or services were necessary to meet the Commission’s benchmarks, it was unable to do so.<sup>21</sup> Carriers claiming that financial hardship prevented compliance with the December 31, 2005 95% penetration deadline were advised that a waiver was unwarranted unless the

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<sup>12</sup> See 47 C.F.R. § 20.18(g)(1).

<sup>13</sup> See 47 C.F.R. § 20.18(g)(1)(v).

<sup>14</sup> See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17457 ¶ 43 (2000) (*Fourth MO&O*).

<sup>15</sup> See 47 C.F.R. § 1.925(b)(3). See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

<sup>16</sup> *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

<sup>17</sup> *Id.*

<sup>18</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

<sup>19</sup> See *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 45.

<sup>20</sup> See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987 (2003) (*Order to Stay*).

<sup>21</sup> *Id.* at 20996-20997 ¶ 25.

carrier provided sufficient and specific factual information,<sup>22</sup> and that a carrier seeking a waiver based on extraordinary financial hardship could strengthen its justification by submitting documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.<sup>23</sup> Finally, the Commission stated that it:

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.<sup>24</sup>

### C. Petition and Comments

#### 1. Alltel's Petition for Limited Waiver

8. Alltel is a Tier II carrier operating a Code Division Multiple Access (CDMA) network, and has deployed a handset-based E911 Phase II location solution throughout its network.<sup>25</sup> Although it concedes failure to meet the December 31, 2005 95% penetration deadline, it asserts that it has "diligently and successfully complied" with all of its other E911 deadlines, and has an "exemplary record of responding to PSAP requests and providing timely deployment of Phase I and Phase II solutions."<sup>26</sup> Alltel reported that, as of December 31, 2005, only 84% of its subscribers had location-capable handsets.<sup>27</sup> Alltel requests that we waive Section 20.18(g)(1)(v) of the Commission's Rules and allow it to defer its obligation to comply with the 95% penetration rule for eighteen months, until June 30, 2007.

9. Alltel basically contends that consumers' decisions to retain existing handsets are preventing it from reaching the 95% penetration requirement. Specifically, Alltel puts forward two arguments – that subscriber churn has not appreciably increased the penetration of location-capable handsets, and that low-volume and rural subscribers are reluctant to upgrade their handsets.<sup>28</sup> It states that the rate of penetration has slowed with time: "the growth rate of further penetration has slowed significantly and is anticipated to slow even more" because handset upgrades "increasingly involve the exchange of one [location-capable] handset for another."<sup>29</sup> Alltel notes that it serves many rural and lightly

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<sup>22</sup> See *id.* at 20997 ¶ 29. The Commission noted that it generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.* at 20997 ¶ 28.

<sup>25</sup> See Alltel Petition at 2. Tier II carriers using a handset-based solution were given extensions of the handset sale and activation deadlines in the *Non-Nationwide Carriers Order*, but remain subject to the December 31, 2005 deadline for ensuring that 95% of their subscribers have location-capable handsets. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14849 ¶ 27.

<sup>26</sup> Alltel Petition at 4.

<sup>27</sup> See Notice of *Ex Parte* Presentation by Alltel, WT Docket No. 05-287 (filed Jan. 19, 2006). Alltel subsequently reported that at the end of February 2006, approximately 86.1% of its subscribers had ALI-capable handsets. See Notice of *Oral Ex Parte* Presentation, WT Docket No. 05-287 (filed Apr. 21, 2006).

<sup>28</sup> See Alltel Petition at 7-9.

<sup>29</sup> See *id.* at 7.

populated markets,<sup>30</sup> where it claims high power analog handsets, lacking location capability, are better capable of completing a 911 call than lower-powered location-capable CDMA handsets.<sup>31</sup> It also attributes its failure to meet the 95% penetration deadline to subscriber resistance, *i.e.*, “[a]necdotal evidence suggests that [low-volume and rural subscribers] do not want to be inconvenienced by unnecessarily exchanging handsets and having to learn the features and functions of a new phone.”<sup>32</sup> It also claims that its ability to comply with the 95% penetration deadline is hindered in remote areas.<sup>33</sup>

10. Alltel also submits that it has taken concrete steps in its failed efforts to comply with the December 31, 2005 deadline,<sup>34</sup> and that it has engaged in marketing and handset upgrade initiatives to encourage customers to upgrade,<sup>35</sup> including: (1) eliminating any fees associated with upgrading handsets; (2) providing discounted location-capable handsets, with some as low as 99 cents; (3) offering existing customers the same handset prices as are offered to new customers; (4) targeting subscribers with non-compliant phones by contacting them through direct mail and text message; (5) including bill inserts addressing the benefits of location-capable handsets, informing customers that such phones are necessary to fully utilize E911, and explaining how to determine whether their phones are location-capable; (6) posting information on E911 benefits on its website; (7) providing information on E911 benefits and handset requirements for distribution in its retail stores; (8) offering a variety of compliant handsets at all price points, ranging from 99 cents to \$299.99; and (9) offering refurbished location-capable handsets to customers without requiring them to enter into a new contract.<sup>36</sup>

11. Alltel contends that the relief it seeks is consistent with the Commission’s waiver standards, is in the public interest, and will not frustrate the Commission’s E911 objectives. It claims that its request is specific, focused, and limited in scope because it seeks “a time-limited request of eighteen months based on marketing and communications initiatives and current projections of the rate of handset upgrades by existing subscribers.”<sup>37</sup> It argues that grant of its requested relief would be consistent with the relief granted in the *Non-Nationwide Carriers Order*, with respect to the E911 interim handset sale and activation requirements.<sup>38</sup> Alltel cites that order for the proposition that the “Commission has modified the ‘reasonable period’ for the phase-in of ALI-capable handsets into a carrier’s subscriber base where market conditions did not evolve as projected.”<sup>39</sup> Alltel also submits that its requested waiver would not undermine the Commission’s public safety objectives, because of Alltel’s diligent efforts to meet the benchmark and because the company elected to employ a handset-based solution that would be more accurate than a network-based solution in Alltel’s substantially rural markets.<sup>40</sup> It also contends that, because fewer than

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<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 11.

<sup>35</sup> *Id.* at 11-14.

<sup>36</sup> *Id.* at 12-13. Alltel adds that, where it acquired markets deploying TDMA and/or GSM systems, “the company has expeditiously overlaid CDMA networks and initiated 100 percent sales of [location-]capable handsets, and has aggressively sought to switch existing subscribers to CDMA and [location-]capable handsets.” *Id.* at 13.

<sup>37</sup> *Id.* at 10-11.

<sup>38</sup> *Id.* at 11.

<sup>39</sup> *Id.* (citing *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14844-46 ¶¶ 12-18 and *Fourth MO&O*, 15 FCC Rcd at 17457-58 ¶¶ 43-44).

<sup>40</sup> *See id.* at 17.

25% of the PSAPs in Alltel's service area will be Phase II-capable by December 31, 2005, "[s]trictly enforcing the December 31, 2005 deadline would effectively force Alltel to compel many customers to surrender their existing handsets or have their service disconnected, even though in many cases those customers' local PSAPs do not have Phase II capability."<sup>41</sup>

## 2. Comments

12. The Wireless Telecommunications Bureau released a Public Notice seeking comment on the Alltel Petition on October 7, 2005.<sup>42</sup> In support of the request, CTIA generally echoed Alltel's assertion that a waiver was justified by lower than expected churn, customer resistance, and limited PSAP readiness, and argued that customer resistance to changing handsets is "especially true for Alltel's subscribers who live in sparsely populated rural areas, where many wireless customers use three-watt analog phones to overcome coverage obstructions and increase the range of service"<sup>43</sup> and it contends that "the Commission should not enforce its rules in a manner that forces consumers to give up their handsets unwillingly."<sup>44</sup>

13. Alltel also received support from five E911 State Coordinators, the Arkansas Board, the State of Florida, Michigan State Police, the State of New Mexico, and the North Carolina Board.<sup>45</sup> These parties stated, variously, that they had "worked closely and effectively with Alltel in deploying E-911," that Alltel had been "diligent" in upgrading its network, and that it had "always been prompt and responsive" to their needs and concerns.<sup>46</sup> They expressed concern that strict enforcement "would unnecessarily inconvenience customers" and "could undermine public safety in some cases by preventing access to 911."<sup>47</sup>

14. NENA filed comments, in which it concluded that Alltel had made "a respectable showing" in its petition, and stated that it "would not object to a suspension of the 95% penetration deadline for Alltel until December 31, 2006," provided that Alltel has met all its other E911 requirements.<sup>48</sup> APCO, although neither endorsing nor opposing the request, stated that "a carrier's affirmative steps to encourage existing customers to replace legacy handsets" should be a "significant factor" in determining whether to grant

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<sup>41</sup> *Id.* at 18.

<sup>42</sup> See Wireless Telecommunications Bureau Requests Comment on Alltel Petition for Limited Waiver of the December 31, 2005 Deadline to Achieve Ninety-Five Percent Penetration of Location-Capable Handsets Among Its Subscribers, WT Docket No. 05-287, *Public Notice*, 20 FCC Rcd 15853 (Wireless. Tel. Bur. 2005). Comments were due Oct. 21, 2005, and reply comments were due Oct. 31, 2005. A list of commenters and reply commenters is included in the Appendix.

<sup>43</sup> CTIA Comments at 3-4. See also National Grange *Ex Parte*, filed Jan. 26, 2006 at 2 (supporting Alltel's waiver request and arguing against disrupting wireless phone service in rural and farming areas).

<sup>44</sup> CTIA Comments at 4.

<sup>45</sup> See Arkansas Board *Ex Parte*, filed Nov. 28, 2005; State of Florida *Ex Parte*, filed Dec. 22, 2005; Michigan State Police *Ex Parte*, filed Dec. 9, 2005; State of New Mexico Comments; North Carolina Board Comments.

<sup>46</sup> Arkansas Board *Ex Parte* at 1; North Carolina Board Comments at 1; State of New Mexico Comments at 1 (stating that, "[t]hrough Alltel's active involvement in the E-911 deployment process, Phase II service will soon be available in our state for Alltel's customers.").

<sup>47</sup> Arkansas Board *Ex Parte* at 1; North Carolina Board at 1; New Mexico Comments at 1.

<sup>48</sup> NENA Comments at 6-7.

relief.<sup>49</sup> APCO believes that “Alltel has taken affirmative steps to encourage its customers to upgrade their handsets, and has highlighted the E9-1-1 benefits of handset replacement” and suggested that “[o]ther carriers should take similar steps.”<sup>50</sup>

15. The Kansas 911 Provider’s Association filed brief comments opposing Alltel’s request and stating that it opposes petitions of “any other wireless telephone service provider that has or may file such petition [seeking an extension of the December 31, 2005 deadline].”<sup>51</sup> It contended that its members had “seen no effort on the part of the wireless service providers in [their] various jurisdictions to inform their customer base of the necessity to upgrade their handsets” and argued that providers had therefore failed to take “concrete steps necessary to come as close as possible to full compliance.”<sup>52</sup> The association asserted that the lack of compliance with the December 31, 2005 deadline by various wireless carriers was the result of their failure “to encourage or provide any incentives to their customers to upgrade their handsets . . . .”<sup>53</sup>

### III. DISCUSSION

16. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and ensure that Phase II would be fully implemented as quickly as possible.<sup>54</sup> Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information.<sup>55</sup> At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.<sup>56</sup> Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public.

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<sup>49</sup> APCO Comments at 4. APCO highlighted three measures in particular: (1) consumer education regarding the benefits of E911; (2) targeted advertising to subscribers with legacy handsets; and (3) special offers of free or low-cost replacements. *Id.* at 4.

<sup>50</sup> APCO Comments at 6.

<sup>51</sup> Kansas 911 Provider’s Association Comments at 1.

<sup>52</sup> *Id.* at 1.

<sup>53</sup> *Id.* at 2.

<sup>54</sup> *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

<sup>55</sup> Phase I E911 service provides a PSAP with data elements containing the telephone number of the originator of the 911 call and the location of the cell site or base station receiving the 911 call. *See* 47 C.F.R. § 20.18(d). Thus, the actual location of the caller can be miles distant from the location information provided to the PSAP, with consequent delay in providing the caller with emergency services, assuming that the caller can actually be located. Phase II service, by comparison, has a required location accuracy of 100 meters for 67% of calls and 300 meters for 95% of calls (network based location solution) or 50 meters for 67% of calls and 150 meters for 95% of calls (handset based location solution). *See* 47 C.F.R. § 20.18(h)(1)-(2). *See also supra* ¶ 4.

<sup>56</sup> *See Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

17. As with other carriers, Alltel has been aware of the December 31, 2005 deadline for over five years<sup>57</sup> – an ample period for Alltel to determine and implement the steps necessary to comply with the Commission’s Rules. Further, the Commission reminded Alltel specifically of the importance of complying with the impending December 31, 2005 95% penetration deadline when it examined Alltel’s merger with Western Wireless.<sup>58</sup> The Commission there noted that Alltel, “like all carriers, [is] obligated to comply with our E911 rules, including the requirement that carriers electing a handset-based E911 solution achieve 95 percent penetration by the end of [2005]. We will not hesitate to take enforcement action if this deadline is not met.”<sup>59</sup>

18. As discussed below, we find that Alltel has not met our waiver standards for excusing non-compliance with the Commission’s E911 requirements. We cannot find that Alltel’s request is “specific, focused and limited in scope,” contains facts sufficient to conclude that the waiver proponent has a “clear path to full compliance,” and demonstrates that Alltel is seeking to achieve compliance as quickly as possible.<sup>60</sup>

19. We first note that the results of Alltel’s efforts as of December 31, 2005 fell well short of the 95% penetration standard. Despite more than a five-year lead time, only 84% of Alltel’s customers had location-capable handsets. Alltel attributes this in the first instance to insufficient customer and handset churn. Yet, as described above, when the Commission adopted a handset penetration requirement in 1999, it emphasized that, while seeking “largely to rely on market forces, coupled with the requirement that new activations be ALI-capable, to replace or upgrade handsets,” carriers were required to take additional steps necessary “to ensure that the public safety goals of this proceeding are achieved within a reasonable period regardless of normal handset churn.”<sup>61</sup> The Commission specifically suggested that such efforts could include “lower rates for customers using ALI-capable handsets, rebates or generous allowances to encourage trade-ins of non-capable handsets, or actual handset exchanges or retrofitting.”<sup>62</sup> Although Alltel made some efforts to encourage customers to purchase location-capable handsets, Alltel knew or should have known well before the December 31, 2005 deadline that those efforts were proving inadequate for achieving compliance. Many of the efforts cited by Alltel, such as providing handsets at varying price points, appear to be nothing more than normal new handset marketing in the CMRS marketplace. Indeed, from the information Alltel has supplied, its efforts to market location-capable phones appear indistinguishable from its efforts to convince subscribers to buy camera phones, a feature prominently promoted in the Alltel marketing literature that accompanied its petition.<sup>63</sup> To the extent Alltel offered free or reduced-price location-capable phones as an inducement to its subscribers to upgrade non-location capable handsets, Alltel could have eliminated any requirement that such customers also accept as a condition of receipt of compliant phones a renewed or extended service contract, which would likely have improved the effectiveness of its efforts. Accordingly, we find unpersuasive Alltel’s argument that lower than expected handset churn justifies granting it a waiver. If carriers experience low churn rates, they should then take more aggressive affirmative steps to encourage adoption of location-capable handsets.

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<sup>57</sup> See *Fourth MO&O*, 15 FCC Rcd at 17455-56 ¶¶ 36-37.

<sup>58</sup> See *Applications of Western Wireless Corporation and ALLTEL Corporation*, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13111 ¶157 (2005).

<sup>59</sup> *Id.*

<sup>60</sup> See *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

<sup>61</sup> Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd 17388, 17412 ¶ 52 (1999).

<sup>62</sup> *Id.* at 17413 ¶ 53.

<sup>63</sup> See Alltel Petition at Exhibits A and B.



20. Alltel's justification for an eighteen month waiver period is similarly deficient in showing the specific steps necessary to demonstrate a "clear path to full compliance" and that it would achieve compliance as quickly as possible. Alltel's request is among the longest requests received from any carrier. Alltel's request appears to be based primarily, if not exclusively, on projections based on its past handset churn and the continued use of the same measures that have proven inadequate in the past. And while in one footnote, Alltel represents that it is "committed to achieving the 95 percent handset penetration level within the period requested," in another Alltel "cautions" that "[w]ith respect to the June 30, 2007 target date, ... factors affecting Alltel's ability to meet the 95 percent level, such as existing customers' willingness to upgrade their handsets, churn, and economic factors, are to a large extent outside of Alltel's control."<sup>64</sup> Variation in customer churn and changes in economic conditions are integral to the industry and, as we advised in the 2001 *Nextel Phase II Waiver Order*, carriers must "do more than simply rely on normal handset churn and market trends."<sup>65</sup> The conditional and speculative nature of Alltel's waiver request clearly is inconsistent with the Commission's requirement that waiver requests be specific and limited in scope. These uncertainties are insufficient to demonstrate the "clear path to full compliance" within a timeframe that is as rapid as possible.<sup>66</sup>

21. We also reject Alltel's argument that lack of PSAP readiness should excuse compliance with the 95% penetration requirement.<sup>67</sup> The lack of PSAP readiness in some areas to receive and utilize wireless caller information does not provide a basis for affording relief from the December 31, 2005 deadline. Handset deployment benchmarks operate independent of PSAP readiness. In this regard, we agree with NENA that location-capable handsets benefit public safety even if the customer's local PSAP is not ready for Phase II, due to the mobile nature of wireless phones.<sup>68</sup> When customers travel, a location-capable phone provides Phase II service in the many communities where PSAPs are, in fact, Phase II ready. We acknowledge that Alltel obtained support of its waiver request from certain State E911 coordinators,<sup>69</sup> and we have expressly encouraged carriers to work with affected public safety entities. Nevertheless, those efforts constitute only one consideration among a totality of circumstances. As spelled out in this *Order*,

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<sup>64</sup> *Id.* at 6 n.12.

<sup>65</sup> *Nextel Phase II Waiver Order*, 16 FCC Rcd at 18285 ¶ 23 ("if carriers experienced low churn rates, ... they should have then taken "more aggressive affirmative steps" to encourage adoption of location-capable handsets, rather than simply pointing to lower than expected churn levels as a basis for supporting waiver relief").

<sup>66</sup> In this regard, we find unpersuasive Alltel's footnote argument that its request finds support in the Commission's grant of Sprint's request in 2003 for a six-month extension of the 100% handset activation requirement even though Sprint left open the possibility that non-location-capable handsets already in distributors' inventories might not be sold by the end of the extension period. See Alltel Petition at 15 n. 33 (citing Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Request for a Limited and Temporary Rule Waiver by Sprint Corporation, *Order*, 18 FCC Rcd 12543, 12550 ¶ 17 n.68 (2003) (*Sprint Handset Activation Order*)). First, the inventory issue was one relatively minor contingency in the context of a request including extensive information about the concrete steps being taken to come as close as possible to achieving compliance, as opposed to the more fundamental uncertainties about compliance within the proposed time period, coupled with only general, market-based efforts in Alltel's request. Second, the Commission did not grant the Sprint request as described, but effectively conditioned it on Sprint's commitment to reach the 100% activation level at the end of the extension period. See *Sprint Handset Activation Order*, 18 FCC Rcd at 12550 n.68.

<sup>67</sup> See Alltel Petition at 18.

<sup>68</sup> See NENA Comments in WT Docket No. 05-288 (filed Oct. 21, 2005) at 4. See also Joint Petition of CTIA and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, WT Docket No. 05-288, *Order*, FCC 06-59, ¶ 22 (rel. Jan. 5, 2007) (*CTIA/RCA Order*).

<sup>69</sup> See *supra* ¶ 13.

when analyzed in the context of all relevant circumstances, Alltel's request does not satisfy the Commission's Phase II E911 waiver standard.

22. Finally, Alltel's argument that it could not comply – and may well be unable to comply in the future – with the 95% penetration requirement because its efforts to market location-capable phones have met with customer resistance<sup>70</sup> is not persuasive. Alltel's claim that some of its customers resist upgrading because they rely on the use of higher-power analog phones in areas where they may not be able to receive wireless service with a digital, location-capable phone, is notably non-specific.<sup>71</sup> For example, Alltel does not specify how many of its customers rely on the use of higher-power phones, or whether it can take any steps to reduce the need for such phones in certain portions of its service territory. We do not know what plans Alltel may have to expand digital coverage into areas where a location-capable phone may be unable to communicate with the network, or whether it has investigated the present or future availability of higher-power, location-capable phones for use in such circumstances.<sup>72</sup>

23. With regard to low-volume analog customers, which Alltel also identifies as resistant to change,<sup>73</sup> their "resistance" may in fact reflect the limited nature of Alltel's undertakings. Other carriers already have undertaken or committed to specific efforts beyond those described by Alltel. For example, Verizon Wireless Puerto Rico (VzWPR), a Tier III carrier, initiated a campaign to call all customers with non-GPS-capable handsets and offer them: (i) a choice between two free GPS-compliant handsets with the renewal of the customer's contract; (ii) a one-year contract term, rather than the usual two years; and (iii) 100 free minutes per month for three months.<sup>74</sup> As a result of these measures, VzWPR states that it reached 95% penetration of GPS-capable handsets on Dec. 19, 2005 and is now in full compliance with Section 20.18(g)(1)(v) of the Commission's rules.<sup>75</sup> In another instance, Great Lakes of Iowa, another Tier III carrier, stated in a pleading filed with the Commission that, as part of its efforts to achieve 95% penetration, it "called each TDMA and analog customer and, as an incentive to migrate to the CDMA network, offered them a free location capable phone and a month of free service if they upgraded their phones," and also "offered to waive its two year contract term, allowing these customers to upgrade to a free phone before their contracts would normally award another free phone."<sup>76</sup> Although not exhaustive, these examples illustrate more aggressive efforts that Alltel could have taken to ensure timely compliance with the 95% requirement. Moreover, these efforts were undertaken by Tier III carriers that also serve

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<sup>70</sup> See Alltel Petition at 5-6.

<sup>71</sup> See *id.* at 3, 6, 8.

<sup>72</sup> Two Tier III carriers have stated that they will introduce a "digital bag-phone manufactured by Motorola which will have transmission characteristics that approach those of traditional analog phones" and will make available for purchase "external antennas and signal boosters that can be attached to [their] ALI-capable phones to enhance the signal quality." See Request for Limited Waiver of Eastern Sub-RSA Limited Partnership, CC Docket No. 94-102 at 6 (filed Dec. 9, 2005); Request for Limited Waiver of Washington RSA No. 8 Limited Partnership, CC Docket No. 94-102 at 6 (filed Dec. 9, 2005).

<sup>73</sup> See Alltel Petition at 3, 5-6, 8.

<sup>74</sup> See Letter from Suzanne Yelen, counsel for Verizon Wireless Puerto Rico, to Marlene H. Dortch, FCC, CC Docket No. 94-102 (filed Dec. 23, 2005) (requesting withdrawal of request for limited waiver of handset penetration rule).

<sup>75</sup> *Id.*

<sup>76</sup> See Great Lakes of Iowa, Inc. d/b/a CellularOne Petition for Temporary and Limited Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102, filed Nov. 10, 2005, at 2-3.

many rural or remote areas and have smaller customer bases – and presumably fewer resources – than Alltel, a Tier II carrier.<sup>77</sup>

24. Finally, we observe that Alltel’s arguments regarding customer resistance, if fully credited (*i.e.*, notwithstanding the analysis set forth above), would undercut Alltel’s argument that it has demonstrated a “clear path to full compliance” with the 95% penetration requirement by June 30, 2007. If accepted as the basis for a waiver, the rationale of those arguments would lead instead to the conclusion that the 95% requirement would be extended indefinitely. Of course, given the critical public safety benefits of Phase II E911, the Commission has never entertained that suggestion, and Alltel has not directly attempted to justify such a result.

25. *Reporting requirements.* In order to closely monitor and assess the status of Alltel’s efforts toward compliance with the E911 requirements, including the 95% handset penetration requirement, we require Alltel to:

- Submit to the Commission status reports on the first of every month, beginning February 1, 2007, until Alltel achieves 95% handset penetration. These reports must include detailed information that describes and discusses with specificity: (1) Alltel’s efforts to encourage customers to upgrade to location-capable handsets; and (2) the percentage of Alltel’s customers with location-capable handsets.
- Within five days of achieving a 95% handset penetration rate, submit to the Commission a letter certifying Alltel’s full compliance with Section 20.18(g)(1)(v).
- Submit to the Commission quarterly reports (every February 1, May 1, August 1 and November 1), beginning February 1, 2007, which shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); and (2) the estimated dates on which Phase II service will be available to PSAPs served by Alltel’s network. These quarterly reports must be filed until one year after Alltel certifies compliance with the 95% handset penetration requirement.

We note that these conditions may be modified by any future enforcement action taken by the Enforcement Bureau.

#### IV. CONCLUSION

26. This record, considered in its totality, does not establish that factors beyond Alltel’s control caused its failure to meet the December 31, 2005 95% penetration deadline. Alltel has failed to adduce facts justifying its non-compliance or warranting its requested waiver. Most importantly, although the Commission’s E911 waiver criteria required Alltel to show that it had “a clear path to full compliance,” it has yet to take even the first steps down such a path. For these reasons, we are denying the Alltel petition and referring to the Commission’s Enforcement Bureau, Alltel’s admitted violation of Section 20.18(g)(1)(v) of the Commission’s Rules when it failed to meet the December 31, 2005 deadline for assuring 95% penetration, among its subscribers, of location-capable handsets.

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<sup>77</sup> We also note that carriers have a history of upgrading their networks to more advanced air interfaces, such as from analog and TDMA systems to CDMA and GSM, and have been quite successful in convincing customers to change handsets to accommodate the new air interface, effectively requiring current customers to change out their handsets in order to continue receiving service.

**V. PAPERWORK REDUCTION ACT**

27. This document contains a new information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies were invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

**VI. ORDERING CLAUSES**

28. Accordingly, IT IS ORDERED pursuant to Sections 1.3 and 1.925 of the Commission’s rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

29. IT IS FURTHER ORDERED, that the Alltel Corporation Petition for Limited Waiver IS DENIED.

30. IT IS FURTHER ORDERED, that Alltel is subject to the reporting requirements specified herein.

31. IT IS FURTHER ORDERED that the matter of Alltel’s non-compliance with Section 20.18(g)(1)(v) SHALL BE REFERRED to the Commission’s Enforcement Bureau for appropriate action.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX****Comments, Reply Comments and *Ex Parte* Filings to Alltel Petition**Comments

Association of Public-Safety Communications Officials-International, Inc. (APCO)  
CTIA – The Wireless Association (CTIA)  
Kansas 911 Providers Association  
National Emergency Number Association (NENA)  
North Carolina Wireless 911 Board (North Carolina Board)

Reply Comments

Alltel Corporation (Alltel)  
National Emergency Number Association (NENA)

*Ex Parte* Filings

Alltel Corporation (Alltel)  
Arkansas Commercial Mobile Radio Services (CMRS) Emergency Telephone  
Services Board (Arkansas Board)  
City of Laramie Police Department (Laramie PD)  
Florida Statewide 911 Coordinator (State of Florida)  
Michigan State Police  
National Grange of the Order of Patrons of Husbandry (National Grange)  
Oglala Sioux Tribe Department of Public Safety (Oglala Sioux Tribe DPS)  
State of New Mexico Wireless E911 Project (State of New Mexico)